

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED, INC.,

Plaintiff,

v.

NEW STAR LASERS, INC.
d/b/a COOLTOUCH INC.

Defendant.

Civil Action No. 04-12157 RGS

**DIOMED'S RESPONSE TO THE COURT'S
ORDER REGARDING POTENTIAL RECUSAL**

As requested by the Court in its order dated May 22, 2006, Diomed herein describes Dr. Chieh-Min Fan's anticipated role in the above-captioned litigation. Unlike in the AngioDynamics and Vascular Solutions litigation (consolidated at Civil Action No. 04-10019-RGS), the deadline to make expert designations in this case has not yet passed. Accordingly, as Dr. Fan has not been designated as a testifying expert in this case, it would be premature for the Court to consider the question of its possible recusal.

If the Court does choose to consider the question now, the lack of any expert designations provides the Court with an additional reason not to recuse itself (besides those delineated in Diomed's response filed in the AngioDynamics and Vascular Solutions litigation (D.I. # 143)).

CONCLUSION

For these reasons, Diomed requests that the Court not recuse itself from the above-captioned case.

Respectfully submitted,

DIOMED, INC.

By its attorneys,

Dated: June 5, 2006

/s/ Michael A. Albert
Michael A. Albert (BBO #558566)
malbert@wolfgreenfield.com
Michael N. Rader (BBO #646990)
mrader@wolfgreenfield.com
John L. Strand (BBO #654985)
jstrand@wolfgreenfield.com
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02210
617.646.8000
Fax 617.646.8646

CERTIFICATE OF SERVICE

I hereby certify that this document and its supporting papers filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Michael A. Albert